

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

APR 25 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

DOCKET FILE COPY ORIGINAL

COMMENTS OF COMPAQ COMPUTER CORPORATION

Compaq Computer Corporation ("Compaq"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/} Compaq restricts these comments to the Commission's proposal to amend Section 64.702(e) of the Commission's rules^{2/} to allow non-dominant interexchange carriers to bundle customer premises equipment ("CPE") with interstate, interexchange services.

Compaq is the fifth largest computer company in the world and the world's leading manufacturer of personal computers ("PCs"). Compaq markets desktop and portable PCs, servers and networking equipment for both business and residential users. Many of Compaq's PCs are equipped with facsimile/data modems and telephone and answering machine capabilities which correspond to equipment classified as CPE when sold on a stand-alone basis. Changes to the

^{1/} *Policies and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Notice of Proposed Rulemaking (March 25, 1996) (hereinafter "Notice").

^{2/} 47 C.F.R. § 64.702(e).

No. of Copies rec'd
List ABCDE

[Signature]

Commission's regulation of CPE will have a direct impact on Compaq's manufacturing of these items. Consequently, Compaq offers these comments encouraging the Commission to structure any changes to Section 64.702(e) to limit or prohibit bundling of CPE and services in markets that continue to lack competition.

BACKGROUND

The *Notice* represents the Commission's latest effort to balance the various competing interests that play a role in the domestic long-distance market. The Commission has proposed a number of changes to its rules which are designed both to implement the new legal framework for interexchange services outlined in the Telecommunications Act of 1996 and to recognize changes in the market for interexchange services.^{3/}

Section VIII of the *Notice* proposes revisions to the Commission's longstanding prohibition on bundling of CPE with the provision of common carrier telecommunications services.^{4/} The Commission had implemented that prohibition on bundling in 1980 in order to protect consumers from being forced to purchase unwanted CPE and to foster the development of a competitive CPE marketplace.^{5/} In recent years, however, the Commission has found competitive markets exist for both CPE and interstate, interexchange services.^{6/} Thus, in the *Notice*, the Commission tentatively concluded "it is unlikely that non-dominant interexchange carriers can engage in the type of anti-

^{3/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter "1996 Act").

^{4/} See *Notice* at 44 *et. seq.*

^{5/} *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 20828, 77 FCC 2d 384, 496 (1980) (*Second Computer Inquiry*).

^{6/} *Notice* at ¶ 86.

competitive conduct that led the Commission to prohibit the bundling of CPE with the provision, *inter alia*, of interstate, interexchange services,"²⁷ and proposed to amend Section 64.702(e) to allow carriers to bundle CPE with interexchange services.

Compaq applauds the Commission's continuing efforts to deregulate markets that have achieved a state of open and robust competition. Moreover, Compaq supports the Commission's attempts to implement the 1996 Act's provisions for deregulating competitive markets. Nonetheless, Compaq encourages the Commission to ensure that any changes to the existing prohibition on bundling are limited to competitive markets. Compaq's concern focuses on services to be provided by the Bell Operating Companies ("BOCs") in the same regions in which they offer local exchange services. Compaq urges the Commission to maintain its prohibition on bundling in those markets until the relevant BOC demonstrates that it is non-dominant for in-region services.

BUNDLING SHOULD BE PROHIBITED IN NONCOMPETITIVE MARKETS

Compaq agrees with the Commission's overall conclusion that bundling should not raise concerns in markets in which there is competition among service providers. At the same time, Compaq shares the Commission's concern that bundling of equipment and services in noncompetitive markets ultimately presents too great a risk of cross subsidization and other anticompetitive activities which harm the public interest.

Compaq urges the Commission to consider the impact on the proposed modifications to the current bundling prohibition of BOC entry into new telecommunications services. Compaq is not

²⁷ *Id.* at ¶ 88.

highly troubled about BOC provision of out-of-region services. In the absence of control over bottleneck facilities, the risk is low that the BOCs will be able to engage in anticompetitive bundling practices to the detriment of other equipment manufacturers. Compaq is not convinced, however, that the same situation will apply in the case of BOC provision of in-region services. In that case, there remains a significant danger of undesired behavior until those markets have been opened to competition.

Compaq specifically encourages the Commission to maintain the current prohibition on bundling for BOC provision of in-region telecommunications services, including interexchange services, until the relevant BOC demonstrates that there is full and robust competition in the local exchange, including the presence of facilities-based competitors, and the Commission determines the particular BOC is no longer dominant in the local exchange market. Compaq urges the Commission to draft its revisions to Section 64.702(e) to ensure that the lifting of the current prohibitions on bundling are not implemented until the Commission determines the relevant BOC is non-dominant for all in-region services, including both local exchange and interexchange services.

UNBUNDLING SHOULD NOT BE MANDATORY IN ALL CASES

The *Notice* invites comments on whether carriers bundling services and CPE should be required to offer those services on a separate, unbundled basis. Compaq does not agree that the Commission should require interexchange carriers to offer unbundled services in all cases. Compaq has suggested the Commission should limit its modification of the prohibition on bundling to competitive markets. Compaq sees no role for mandatory unbundling of services in those markets. In competitive markets where bundling is to be permitted, market forces should be sufficient to deter

unwanted behavior that might harm the public interest. Any further regulation of those markets would be unnecessary and contrary to the principles enumerated in the 1996 Act.

CONCLUSION

Compaq Computer Corporation thanks the Commission for the opportunity to participate in this proceeding and requests that the Commission consider the comments contained herein.

Respectfully submitted,

COMPAQ COMPUTER CORPORATION

A handwritten signature in black ink, appearing to read "Robert A. Mazer", with a long horizontal flourish extending to the right.

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
(202) 639-6500

Its Attorneys

Of Counsel:

Jeffrey A. Campbell
Manager
Federal Government Affairs
Compaq Computer Corporation
1300 I Street, N.W., Suite 490E
Washington, D.C. 20005

Dated: April 25, 1996